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The legislature can delegate the right to pass that act. It is difficult to see why the act should have one effect when the legislature passes it itself, and another when the legislature's delegate passes it. It is binding law in both cases. In each a duty is created. There is no evidence that the legislature intends to delegate only part of its power. If the legislature creates the duty by a clause in the city's charter, the duty is owed to individuals. If the charter empowers the municipality to create the duty, it is reasonable to suppose that the legislature intends the same result to follow.<sup>9</sup>

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RESCISSION AND REFORMATION FOR MUTUAL MISTAKES OF FACT. — A distinction should be drawn between three classes of cases in which, on account of a mutual mistake of fact, equity is asked to give affirmative relief in the nature of rescission or reformation. The simplest of them arises from a failure to complete the formation of a legal contract. For example, the ostensible agreement may be capable of two reasonable interpretations, one of which is accepted by each party, as where A, with two lots in Boston, agrees to sell "my lot in Boston." Other elements of a contract, a supposed party, or consideration, may be non-existent. Since the invalidity of the contract is recognized at law, the intervention of equity is generally unnecessary. If, however, a bond or a deed has been delivered by way of partial performance, a bill *quia timet* might bring relief through cancellation of the instrument. In a second class of cases a legally valid contract has been entered into under a mutual mistake as to certain material facts which form the conscious inducement of the contract. The mutual error may be as to the quality or identity of land sold, the quantity of land in a parcel (rescission, however, being usually granted in the latter case only where the error is considerable), the nature or character of a chattel. Here there can be no true reformation, since there is no previous contract with which the mistaken agreement can be squared. Hence equity will conclude that there would have been no contract had the mutual error not been made, but cannot go further and create the contract that might have been formed. Sometimes, as where a party has received more or less land than he paid for, and justice is best subserved thereby, equity may allow the defendant an election between rescission and a money payment.<sup>1</sup> But ordinarily rescission is the only remedy.<sup>2</sup> In a recent New York case, for example, a real estate broker employed to sell lot A mistakenly pointed out lot B as the one for sale. The plaintiff agreed to buy and signed a contract properly describing lot A. Because of the blunder the court properly decreed a rescission. *Silverman v. Minsky*, 109 N. Y. App. Div. 1. Had authority been given the agent to dispose of lot B also, the case might be one for reformation on the principles which govern the third class of cases.

In this class there is an initial contract, the expression or performance of which in a written contract or deed is, because of mutual mistake or the mistake of one party and the fraud of the other, incorrect. Here equity makes the performance or contract conform to the original agreement by such decree as seems proper. To this end one who has gained or retained

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<sup>9</sup> See *Taylor v. The Lake Shore, etc., Rd. Co.*, 45 Mich. 74.

<sup>1</sup> *Lawrence v. Staigg*, 8 R. I. 256; *Miller v. Craig*, 83 Ky. 623.

<sup>2</sup> *Hitchcock v. Giddings*, 4 Price 135; *Bigham v. Madison*, 103 Tenn. 358.

property through the mistake in performance is said to be under an equitable obligation, broadly termed a constructive trust, to convey it to the other contracting party.<sup>3</sup> Where, as might be true in the principal case, the writing has omitted land comprised in a prior oral agreement, some courts have refused to compel reformation, on the ground that they would be enforcing specific performance in the teeth of the Statute of Frauds.<sup>4</sup> But in all these cases mistake, and not a contractual right of specific performance, is the basis of equitable relief.<sup>5</sup> Business understanding and convenience, to be sure, forbid that mistake or surprise should always give rise to an equity. But the retention of property or of a written contract may at least, in the circumstances noted, be fastened upon as an unjust enrichment, analogous to that arising from actual fraud.

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POWER OF STATE TO EXCLUDE FOREIGN CORPORATIONS. — The growing hostility towards corporations, especially those engaged in inter-state business, has led to highly restrictive regulations and, frequently, total exclusion by states of certain classes of foreign corporations.<sup>1</sup> This renders timely a brief inquiry, in a recent article, into the limitations upon this power of a state. *Upon the Power of One State to Exclude the Corporations of Another*, by Eugene F. Ware in 17 Green Bag 699.

A corporation is a creature of local law and cannot exist outside of the state of its creation. Yet, like a natural person, it may act elsewhere through agents. Whether a state will recognize the existence of a foreign corporation and permit it to do business therein is determined solely by the laws of that state. The common law, however, has generally recognized a foreign corporation.<sup>2</sup> But, in the absence of constitutional limitations, the state has an undoubted right to regulate or exclude foreign corporations.<sup>3</sup> To the Constitution, then, we must look for the curtailment of a state's right of control over foreign corporations. That a corporation is not entitled to the privileges of "citizens" under Article IV, sec. 2, is settled.<sup>4</sup> And, although a corporation is a "person" within sec. 1 of the Fourteenth Amendment, forbidding the denial of the equal protection of the laws "to any person within the jurisdiction,"<sup>5</sup> this does not prevent a state from imposing conditions to the admission into the jurisdiction of a foreign corporation, and a state may discriminate against different foreign corporations in imposing conditions upon their right to enter the state.<sup>6</sup> Though the power to license implies the right to revoke, a state cannot, however, deprive a corporation of rights of property or contracts gained during its licensed activity, nor yet impair its own contract with the corporation.<sup>7</sup>

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<sup>3</sup> *Cole v. Fickett*, 95 Me. 265.

<sup>4</sup> *Glass v. Hulbert*, 102 Mass. 24; *Davis v. Ely*, 104 N. C. 16. See also *Petes v. Hambach*, 48 Wis. 443.

<sup>5</sup> *Comstock v. Coon*, 135 Ind. 640. See 2 *Pomeroy, Eq. Jurisp.*, 3d ed., § 867 and note.

<sup>1</sup> See Beale, *Foreign Corp. Chap. VII.*

<sup>2</sup> *Bank of Augusta v. Earle*, 13 Pet. (U. S.) 519, 589.

<sup>3</sup> *Watts-Pierce Oil Co. v. Texas*, 177 U. S. 28.

<sup>4</sup> *Paul v. Virginia*, 8 Wall. (U. S.) 168.

<sup>5</sup> *Smyth v. Ames*, 169 U. S. 466, 522.

<sup>6</sup> *Philadelphia Fire Ass'n v. New York*, 119 U. S. 110.

<sup>7</sup> See *Bedford v. Eastern Building and Loan Ass'n*, 181 U. S. 227; *N. Y., Lake Erie, etc., Co. v. Pennsylvania*, 153 U. S. 628.